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Legal Protection for Freedom of Expression on Social Media in the Digital Era

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Abstract:

The development of social media has transformed public communication patterns by providing a broad space for individuals to express opinions, obtain information, and participate in social and political discussions. However, this openness has also given rise to various problems, such as disinformation, hate speech, online harassment, privacy violations, and content moderation practices that have the potential to limit freedom of expression. This study aims to analyze the relationship between freedom of expression, protection of individual rights, self-regulation mechanisms, and social media regulation in addressing the development of the digital space. The study uses a literature review method by examining scientific articles, legal documents, and relevant academic sources obtained through Google Scholar and other academic databases, focusing on literature from the last five years. The legal analysis in this study refers to Article 28E paragraph (3), Article 28F, and Article 28J of the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 concerning Human Rights, Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions, Law No. 27 of 2022 concerning Personal Data Protection, and Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. The study's findings indicate that protecting freedom of expression requires a balance between the individual's right to express opinions and the need to protect the public from harmful content. State regulation, platform moderation, algorithm transparency, complaint mechanisms, and civil society involvement play a crucial role in establishing digital governance. In conclusion, social media governance that is proportional, transparent, accountable, and based on human rights is needed.

Keywords:

Digital Regulation; Disinformation; Freedom of Expression; Human Rights; Social Media.

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1. Introduction

In this increasingly connected digital era, social media has become a primary platform for people to communicate, obtain information, form opinions, and participate in various public discussions. The development of digital platforms has transformed communication patterns, making them more open, interactive, and participatory. Users are no longer merely recipients of information, but can also produce, distribute, and respond to information quickly to a wide audience. These changes have made digital platforms a crucial space for shaping public discourse and public participation. Sander (2021) shows that social media has become a vital part of democratic life while creating new forms of power and governance that influence how people participate in the digital public sphere. Demuyakor and Doe (2022) also found that social media can strengthen democracy and freedom of expression, although at the same time, it also presents problems such as hate speech, political harassment, and misinformation. In the Indonesian context, these developments are constitutionally based through Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which guarantees freedom of association, assembly, and expression, and Article 28F, which guarantees the right of every person to communicate, obtain information, and convey information through various available channels.

These developments are closely related to freedom of expression, a fundamental principle of a democratic society. Social media provides individuals with the opportunity to express opinions, obtain information, disseminate ideas, and participate in shaping public opinion without relying entirely on conventional media. Psychogiopoulou and Casarosa (2020) point out that social media has become an important means for individuals to exercise their right to freedom of expression, but at the same time, it has raised various issues regarding the protection of other fundamental rights. In this context, the protection of freedom of expression cannot be separated from the need to balance it with other rights and interests. Sander (2021) emphasizes that the development of digital platforms has created new challenges for human rights law because platform companies have significant influence on the conditions under which freedom of expression is exercised in the digital space. Normatively, this principle is also reinforced by Law Number 39 of 1999 concerning Human Rights, which guarantees freedom of expression and opinion, and Law Number 12 of 2005, which ratified the International Covenant on Civil and Political Rights (ICCPR) into Indonesia's legal framework. Law Number 12 of 2005 remains in effect and serves as the basis for ratification of the ICCPR in Indonesia.

However, the expansion of freedom of expression through social media also raises various issues. Users' freedom to produce and disseminate information can be accompanied by the spread of false information, disinformation, hate speech, online harassment, and other content that has the potential to harm individuals and society. Shu et al. (2020) explain that disinformation on social media is becoming an increasingly serious problem due to the ease of creation, dissemination, and consumption of false information. The study also shows that handling disinformation faces challenges because false information takes various forms and can spread through social and technological mechanisms. Demuyakor and Doe (2022) also found that social media use can increase the spread of fake news, misinformation, disinformation, hate speech, and political harassment. Thus, freedom of expression on social media has a dual dimension: it provides opportunities for the public to express opinions while simultaneously creating risks to the quality of information and the security of the digital public space. In the Indonesian legal system, this issue is regulated, among other things, through Law Number 11 of 2008 concerning Electronic Information and Transactions, as most recently amended by

Law Number 1 of 2024. This amendment updated several provisions regarding the content of electronic information, including provisions regarding attacks on honor or reputation and the dissemination of certain information that causes harm.

This issue is further complicated by the fact that the social media ecosystem is not entirely neutral. The content users receive can be influenced by algorithms and automated mechanisms that determine how information is classified, prioritized, recommended, or removed. Gorwa et al. (2020) explain that algorithmic content moderation is increasingly used by large platforms to address issues such as hate speech, misinformation, and harmful content. However, the use of algorithmic systems also raises issues regarding transparency, fairness, and accountability because decisions regarding content can be made through systems that are difficult for users to understand and monitor. De Gregorio et al. (2020) also emphasize that algorithmic content moderation can impact fundamental rights and democratic values because platforms have the ability to determine standards for content removal on a global scale. Within the Indonesian legal framework, the implementation of electronic systems is also regulated through Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, which regulates the implementation of electronic systems in the digital ecosystem. PP No. 71 of 2019 has been in effect since October 10, 2019 and is one of the regulatory bases for the implementation of electronic systems in Indonesia.

In these conditions, the issue of freedom of expression is no longer solely related to government actions in restricting opinions, but also to the decisions of platform companies in determining what content can be maintained, removed, restricted, or disseminated. Jørgensen and Zuleta (2020) show that social media platforms increasingly play a role in regulating freedom of expression through privacy rules and content moderation mechanisms. This situation creates problems because private companies gain significant influence over the implementation of rights that are traditionally discussed more in the relationship between the state and the individual. Private platforms also have significant influence in determining the boundaries of acceptable expression online, so a framework is needed that can connect platform moderation practices with the principles of freedom of expression and human rights. In the context of Indonesian regulations, the responsibilities and obligations of private electronic system providers are also regulated through Regulation of the Minister of Communication and Information Technology Number 5 of 2020 concerning Private Electronic System Providers, which was later amended by Regulation of the Minister of Communication and Information Technology Number 10 of 2021. Regulation of the Minister of Communication and Information Technology No. Law No. 5 of 2020 regulates private electronic system providers and is effective after amendments through Ministerial Regulation No. 10 of 2021.

On the other hand, efforts to control harmful content cannot be carried out at the excessive expense of freedom of expression. Content moderation is necessary to address disinformation, hate speech, and various forms of harmful content, but opaque mechanisms can lead to legitimate content being restricted or removed. Gorwa et al. (2020) show that algorithmic moderation systems can raise transparency and fairness issues when decisions regarding expression are made through automated processes that are difficult to understand. Sander (2020) also emphasizes the importance of a human rights-based approach to content moderation, including transparency, oversight, and redress mechanisms for users affected by moderation decisions. Therefore, social media regulation needs to consider the balance between protecting the public and respecting freedom of expression. This principle of balance aligns with Article 28J of the 1945 Constitution of the Republic of Indonesia, which places the exercise of rights and freedoms within the framework of respect for the rights of others and maintaining order in society.

The protection of individual rights is also closely linked to the protection of privacy and personal data. Social media allows for the large-scale collection, processing, use, and dissemination of user data, so freedom of expression must be placed alongside the right to personal protection. In the Indonesian context, this issue is specifically regulated through Law Number 27 of 2022 concerning Personal Data Protection. The law emphasizes that personal data protection is part of human rights protection and aims to guarantee citizens' right to personal protection.

Based on these conditions, freedom of expression on social media is an issue related not only to individual rights, but also to technology governance, platform responsibility, protection of the rights of others, and the public interest. Regulation of social media faces the challenge of determining a proportional boundary between freedom of expression and the need to prevent the spread of content that could cause social harm. Vese (2021) points out that while regulation of fake news may be necessary to protect the public, overly broad regulation also has the potential to restrict freedom of expression and create a chilling effect. Fichtner (2022) shows that the debate over content moderation is ultimately a question of democratic legitimacy because it concerns the division of power and responsibility between the state, platforms, and users. Therefore, studying freedom of expression on social media is crucial for understanding how technology, algorithms, regulations, and moderation mechanisms impact the exercise of this right and how digital governance can be designed in a manner that is proportional, transparent, and oriented toward protecting human rights

2. Methods

This research uses a literature review method to analyze the issue of freedom of expression in social media and the regulations governing it. The research process was conducted by determining the focus of the study on freedom of expression, protection of individual rights, content moderation, self-regulation, and social media regulation. Literature sources were identified through Google Scholar and other academic databases using keywords such as freedom of expression, social media, content moderation, social media regulation, and human rights. The literature was then selected based on its relevance, source credibility, and relevance to the research focus, prioritizing scientific articles published in the last five years, as well as legal documents and reports from relevant institutions. In addition to academic literature, this research uses a normative approach to the national legal framework relating to freedom of expression and digital space, namely Article 28E paragraph (3), Article 28F, and Article 28J of the 1945 Constitution of the Republic of Indonesia; Law No. 39 of 1999 concerning Human Rights; Law No. 1 of 2024 concerning the Second Amendment to Law No. Law No. 11 of 2008 concerning Electronic Information and Transactions; Law No. 27 of 2022 concerning Personal Data Protection; Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions; and Regulation of the Minister of Communication and Information Technology No. 5 of 2020 concerning Private Electronic System Operators, as amended by Regulation of the Minister of Communication and Information Technology No. 10 of 2021. These regulations serve as a framework for understanding the limits of freedom of expression, privacy protection, the responsibilities of platform operators, and restrictions on unlawful content. Law No. 1 of 2024, specifically, constitutes the second amendment to the ITE Law and came into effect on January 2, 2024.

The analysis results were then synthesized to identify relevant patterns, debates, and regulatory approaches to freedom of expression on social media. The analysis was conducted by grouping the literature findings into several key aspects: protection of individual rights, content moderation mechanisms, the role of social media platforms, legal regulation, civil society involvement, and the impact of

globalization. The provisions of the 1945 Constitution of the Republic of Indonesia are used as a constitutional basis, particularly because Article 28E paragraph (3) guarantees freedom of expression and Article 28F guarantees the right to communicate and to obtain and convey information. At the same time, Article 28J serves as the basis that the implementation of rights and freedoms can be limited by law to respect the rights of others and meet legitimate demands in a democratic life. Each finding is compared to see similarities, differences, and the development of arguments in the literature. This approach is used to gain a comprehensive understanding of the challenges of regulating freedom of expression in the digital space and formulate a synthesis regarding the form of social media governance that can maintain a balance between freedom of expression, protection of individual rights, and the public interest.

3. Results and Discussion

3.1. Protection of Individual Rights, Self-Regulation, and Regulation of Freedom of Expression on Social Media

The study's findings indicate that freedom of expression on social media is closely linked to the protection of other individual rights, particularly the rights to privacy, reputation, security, and protection from harassment and misuse of information. Constitutionally, these freedoms are legally based in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which guarantees freedom of association, assembly, and expression of opinion. Article 28F, which guarantees the right of every person to communicate and to obtain, process, and convey information through various available channels. However, these freedoms are not absolute. Article 28J of the 1945 Constitution provides the basis for restrictions through law to ensure respect for the rights and freedoms of others and to meet just demands in a democratic society. Therefore, the use of social media as a space for expression must be placed within a framework of balance between individual freedom and protection of the interests and rights of others.

Silitonga (2023) explains that social media platforms have significant power to influence users' exposure to information through content filtering, sorting, and recommendation mechanisms. This situation demonstrates that the issue of freedom of expression relates not only to users' right to speak, but also to their right to determine the information they receive and to obtain protection against improper use of data and information. This protection aspect is reinforced by Law No. 27 of 2022 concerning Personal Data Protection, which regulates the rights of personal data subjects, the processing of personal data, the obligations of data controllers and processors, and prohibitions on the use of personal data. Therefore, freedom of expression on social media must be placed alongside privacy protection so that the use and dissemination of information about individuals does not negate the right to personal data protection.

Protection of individuals becomes even more crucial when social media is used to spread false information, accusations, insults, or offensive content. Shu et al. (2020) explain that disinformation thrives because social media provides easy access to create, disseminate, and consume information, while users' ability to distinguish between true and false information is not always adequate. From an Indonesian legal perspective, the dissemination of content through electronic systems also falls within the scope of Law No. 27 of 2022 concerning Personal Data Protection. Law No. 1 of 2024, the second amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions, amends several provisions related to electronic information, including provisions regarding insults or defamation and the

dissemination of hate speech. Therefore, freedom of expression cannot be interpreted as unlimited freedom, especially when such expression violates the rights and interests of others.

The next issue relates to the role of social media companies as managers of digital communication spaces. Platforms not only provide a place for users to communicate but also establish rules regarding the types of content that are permitted, restricted, or removed. Koltay (2021) points out that social media platforms have become important gatekeepers for freedom of expression because their decisions can determine whether content can be accessed, disseminated, or removed. In the Indonesian context, the role and obligations of electronic system providers are also related to Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions and Regulation of the Minister of Communication and Information No. 5 of 2020 concerning Private Electronic System Providers, which was later amended by Regulation of the Minister of Communication and Information No. 10 of 2021. Government Regulation No. 71 of 2019 is the regulatory framework for the implementation of electronic systems and transactions, while Ministerial Regulation No. 5 of 2020 specifically regulates the implementation of private electronic systems.

3.2. Civil Society Involvement, Platform Governance, and the Impact of Globalization on Freedom of Expression

Further studies indicate that freedom of expression on social media has a global dimension because digital platforms enable communication to occur without geographical boundaries. A single piece of content can be created by a user in one country, processed through an internationally operating platform system, and consumed by people in various jurisdictions. This situation means that the regulation of freedom of expression cannot rely entirely on national law. In the Indonesian context, the national framework still provides boundaries and protections through the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999, Law No. 1 of 2024, Law No. 27 of 2022, and regulations concerning electronic system providers. This framework serves as the basis for ensuring that the development of digital technology remains within the framework of human rights protection and legal certainty.

This issue is increasingly evident in the growing power of platforms in determining the boundaries of public communication. Gorwa et al. (2020) explain that technology companies are increasingly using automated mechanisms to regulate large amounts of content, while De Gregorio et al. (2020) emphasized that online moderation has consequences for fundamental rights and democratic values. Platforms can determine how content is categorized, distributed, or removed, while these processes often occur through technical systems that are not fully understood by users. Within the Indonesian framework, the existence of platforms as electronic system providers needs to be understood in conjunction with Government Regulation No. 71 of 2019 and Ministerial Regulation No. 5 of 2020 in conjunction with Ministerial Regulation No. 10 of 2021. Therefore, platform governance can no longer be viewed solely as a business issue, but also as a legal, democratic, and human rights issue.In this context, transparency is a key principle. Users need to know why content is removed, restricted, or discouraged. Without transparency, users find it difficult to distinguish between restrictions necessary to protect the public and those caused by algorithmic errors or commercial interests. This principle of transparency becomes increasingly important because restrictions on expression must be placed within the framework of Article 28J of the 1945 Constitution of the Republic of

Indonesia and must not diminish the substance of the rights guaranteed by Articles 28E and 28F. Magalhães and Ganesh (2023) show that platforms have built increasingly complex moderation systems as part of their efforts to control content and manage public discourse.

The use of artificial intelligence in moderation also presents new challenges to user trust. Wang (2023) found that user perceptions of AI-based moderation are influenced by the algorithm's level of acceptance and trust in the system. This means that the success of moderation is determined not only by the algorithm's technical ability to identify content, but also by the level of public trust in the decision-making process. Regarding data protection, the use of automated technology must also comply with Law No. 27 of 2022 concerning Personal Data Protection, as this law regulates the processing of personal data and the rights of personal data subjects. Therefore, the use of AI in moderation must be complemented by human oversight, decision explanations, and correction mechanisms.

Disinformation also demonstrates that freedom of expression issues cannot be resolved solely through technological approaches. Vicari and Komendatova (2023), through a meta-analysis of research on the use of AI to address misinformation on social media, demonstrate the significant academic interest in the use of technology to detect and address misleading information. While technology can help identify large-scale patterns of disinformation, issues of context, accuracy, and deciding whether information is truly harmful still require human judgment. Law No. 1 of 2024 provides a legal framework for various forms of electronic information misuse, but its implementation must still respect the constitutional limits of freedom of expression as guaranteed by Articles 28E and 28F of the 1945 Constitution of the Republic of Indonesia. Therefore, technological approaches must be combined with digital literacy, fact-checking, public education, and community participation.

Civil society involvement is crucial in this context. Civil society can serve as a watchdog over platform and government policies, while also acting as a voice for user interests. Riedl and Naab (2021) show that users have differing views on who should be responsible for addressing problematic comments in the digital space, including the state, platform operators, media organizations, and users themselves. Public participation is also relevant to Law No. 27 of 2022, which includes public participation as an aspect of the personal data protection regime. These findings demonstrate that social media governance requires a clear division of responsibilities.

The involvement of these various actors then leads to the concept of multistakeholder governance. Caplan (2023) explains that platforms are beginning to distribute some of the responsibility for formulating content policies to external stakeholders. This approach can broaden participation in the policy-making process while reducing the unilateral power of companies. In the Indonesian context, this approach can be integrated into the regulatory framework for electronic system providers, connecting the government, platform operators, users, and the public. Minister of Communication and Information Technology Regulation No. Law No. 5 of 2020 concerning Private Electronic System Providers, as amended by Ministerial Regulation No. 10 of 2021, is a regulatory instrument specifically targeting private electronic system providers.

The impact of globalization also demonstrates the need for cross-border cooperation. Because platforms operate transnationally, a completely fragmented regulatory environment can create legal uncertainty and differential user protection. Griffin (2023) demonstrates that platform governance is influenced not only by

states and technology companies, but also by other economic interests, such as advertisers, that can influence the type of content deemed appropriate for distribution. This situation demonstrates the importance of locating national regulations within a broader framework of human rights protection, while Law No. 39 of 1999 remains a national foundation for protecting human rights.

The discussion demonstrates that the globalization of social media has made freedom of expression a cross-border issue that requires a collaborative approach. Effective regulation needs to maintain freedom of expression as a core principle, while simultaneously providing protection for privacy, security, reputation, and other individual rights. In the context of Indonesian law, this balance is reflected in the relationship between Articles 28E and 28F of the 1945 Constitution of the Republic of Indonesia, which guarantee freedom of opinion and information, and Article 28J, which allows for restrictions based on law. This is reinforced by the Human Rights Law, the Electronic Information and Transactions Law, the Personal Data Protection Law, the Government Regulation on the Implementation of Electronic Systems and Transactions, and regulations regarding private-sector E-Commerce (PSE). The most relevant model is neither fully repressive state regulation nor fully independent platform self-regulation, but rather co-regulation that combines law, platform responsibility, independent oversight, civil society participation, and international cooperation.

4. Conclusion

Based on the study's findings, it can be concluded that freedom of expression on social media is an essential part of democratic life in the digital age, but its implementation cannot be separated from the obligation to respect the rights of other individuals. Social media has expanded people's opportunities to express opinions, obtain information, and participate in the public sphere. However, the fast, open, and global nature of social media also increases the risk of the spread of disinformation, hate speech, online harassment, privacy violations, and other content that can harm individuals and society. Therefore, protecting freedom of expression should not be understood solely as preventing restrictions on users; it must also encompass the creation of a safe digital environment capable of protecting the rights of others.

The study also shows that platform self-regulation plays an important role in controlling content, but cannot be the sole regulatory mechanism. Community policies, content moderation, and the use of algorithms are necessary to address harmful content, but their implementation must adhere to the principles of transparency, accountability, proportionality, and a complaint mechanism for users. State regulation is also necessary, but legal intervention must have a legitimate purpose and not result in excessive restrictions on expression. Thus, the primary issue is not choosing between freedom of expression and protecting society, but rather developing mechanisms that can achieve both in a balanced manner.

Furthermore, the cross-border nature of social media demonstrates that the governance of freedom of expression cannot be fully resolved through national approaches. Differences in regulations between countries can lead to fragmentation in the management of global platforms. Therefore, international cooperation oriented towards human rights standards is needed. UNESCO emphasizes that digital platform governance needs to involve states, platforms, independent regulators, civil society, media, academia, and the technical community through a multistakeholder approach to safeguard freedom of expression while addressing disinformation and hate speech.

Therefore, the most relevant regulatory model is human rights-based digital governance and multistakeholder governance, which combines government regulation, platform responsibility, independent oversight, civil society participation, and international cooperation. This approach is crucial to prevent efforts to address harmful content from degenerating into excessive censorship. Ultimately, the success of social media regulation must be measured not only by its ability to remove harmful content, but also by its ability to maintain a free, safe, transparent, accountable, and human rights-respecting digital space.

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The data that support the findings of this study are available from the corresponding author upon reasonable request.